



PUBLIC NOTICE

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DA 11-1346

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FURTHER INQUIRY INTO FOUR ISSUES IN THE UNIVERSAL SERVICE LIFELINE / LINK UP REFORM AND MODERNIZATION PROCEEDING

WC Docket Nos. 11-42, 03-109;
CC Docket No. 96-45

Comment Date: August 26, 2011

Reply Comment Date: September 2, 2011

To comprehensively reform and modernize the universal service Lifeline and Link Up programs in light of recent technological, market, and regulatory changes, on March 4, 2011 the Commission released the *2011 Lifeline and Link Up Notice of Proposed Rulemaking (NPRM or 2011 Lifeline and Link Up NPRM)*.¹ The NPRM sought public comment on proposed reforms that would significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot programs that would assist the Commission in assessing strategies to increase broadband adoption, without increasing overall program size. Based on the current record in this proceeding, four issues in particular merit further inquiry: designing and implementing a Lifeline/Link Up broadband pilot program to evaluate whether and how Lifeline/Link Up can effectively support broadband adoption by low-income households;² limiting the availability of Lifeline support to one discount per residential address;³ revising the definition of Link Up service, as well as the possible reduction of the \$30 reimbursement amount for Link Up support;⁴ and improving methods for verifying continued eligibility for the program.⁵ We believe that the Commission's analysis would benefit from further development of these issues in the record, and therefore seek further comment focused on these areas.

¹ *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (*2011 Lifeline and Link Up NPRM*).

² *See id.* at 2856-62, paras. 279-302.

³ *See id.* at 2805-10, paras. 106-25.

⁴ *See id.* at 2795-97, paras. 73-74, 78-79.

⁵ *See id.* at 2825-29, paras. 179-90.

1. **Broadband Pilot Program.**

- a. Scope of Permissible Funding. Some commenters support using universal service dollars to fund equipment and training for the proposed broadband pilot program, yet they do not cite to any legal authority to do so.⁶ We seek comment on the Commission's statutory authority to permit universal service funds to be used for such purposes, directly or indirectly, and what other legal considerations must be addressed before the Commission proceeds with a broadband pilot program.
- b. Consumer Eligibility for Pilot Program. In the NPRM, the Commission sought comment on whether to allow some pilot projects to deviate from the federal default rules with regards to consumer eligibility.⁷ Benton commented that more permissive eligibility standards would be more useful for a broadband pilot program.⁸ Specifically, Benton suggested that (1) the threshold income for eligibility should be raised to 150 percent above Federal Poverty Guidelines (FPG), and (2) residents of group homes should be eligible.⁹ Smith Bagley, however, stated that the pilot should use the same or similar eligibility criteria as the current low-income program.¹⁰ USTelecom concurred.¹¹ Main Street Broadband commented that variations in eligibility should be tested, but did not specify how.¹² We seek additional focused comment specifically on whether to maintain the current eligibility requirements for consumers participating in the pilot program that are currently used in the low-income program, or whether to adopt stricter or more permissive eligibility requirements for those consumers.¹³ How might adjusting the eligibility criteria affect our ability to maximize broadband adoption while providing support that is sufficient, but not excessive? How would it affect the reliability and statistical significance of the results of the pilot program? How would it help the pilot programs yield better data on how to accomplish our goals of maximizing adoption in low-income communities?
- c. Barriers to Consumer Participation in Pilots. The National Association of Regulatory Utility Commissioners supports a Lifeline/Link Up broadband pilot program and urges the Commission not to require Lifeline/Link Up broadband service pilot program participants to change local telephone service providers, purchase bundled broadband and voice services, or otherwise be penalized when they purchase Lifeline and Link Up

⁶ See, e.g., Box Top Lifeline/Link Up NPRM Comments at 1, 3; NCTA Lifeline/Link Up NPRM Comments at 4-5; USTelecom Lifeline/Link Up NPRM Comments at 25.

⁷ See *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2859-60, para. 292.

⁸ Benton Foundation Lifeline/Link Up NPRM Comments at 10.

⁹ *Id.*

¹⁰ SBI Lifeline/Link Up NPRM Comments at 7.

¹¹ USTelecom Lifeline/Link Up NPRM Comments at 22.

¹² MSB Lifeline/Link Up NPRM Reply Comments at 5-6.

¹³ 47 C.F.R. § 54.410.

broadband services and enabling access devices.¹⁴ Commenters should address whether and how the Commission could implement those recommendations. Commenters are encouraged to provide a legal analysis to support their positions.

- d. Pilot Evaluation. We invite further comment on the structure of the pilot projects, how to evaluate the results of pilot projects, and what reporting requirements should be adopted for pilot participants.¹⁵
- i. Should the Commission structure the pilot program so that each individual participant tests multiple design elements (*e.g.*, price of the service, length of the offer, service type, kind of device connected to the broadband, etc.), or should each participant test a single variable for comparison against pilots operated by other participants?
 - ii. The NPRM recognized that the cost of equipment is a major barrier to broadband adoption, and proposed to require at least some participants to provide the necessary hardware.¹⁶ It also proposed to test the impact of variations in equipment discounts.¹⁷ Should we also test the impact on adoption and broadband retention when equipment is leased, as opposed to purchased?
 - iii. What quantitative metrics could the Commission use to evaluate whether approaches tested during the pilot program further the proposed goals of supporting broadband adoption for low-income households and making broadband affordable while providing support that is sufficient, but not excessive? For instance, should we assess the total number of new adopters; new adopters as a percentage of eligible program participants; cost of support for each new adopter; average percentage of participants' discretionary income spent on discounted broadband service through the pilot relative to the national average percentage of household discretionary income spent on broadband; and/or some other metric(s)?
 - iv. How could we evaluate the relative impact of the service discount compared to other potential factors that could be part of a comprehensive strategy to increase broadband adoption, such as the provision of training or equipment? The Commission proposed to develop information about the cost per participant and cost per new adopter through the pilot program.¹⁸ This information could assist the Commission in assessing the costs and benefits of particular approaches to whether broadband should be supported, and if so, how. We seek further comment on this proposal and whether there are other types of data that the Commission should review to evaluate whether a given approach would provide support that is sufficient but not excessive.

2. **One-Per-Residence Limitation.** In the *2011 Lifeline and Link Up NPRM*, the Commission

¹⁴ See Policy Resolutions Passed by the Board of Directors of the National Association of Regulatory Utility Commissioners, Resolution Supporting a Low-Income Broadband Service Adoption Program (July 20, 2011), <http://summer.narucmeetings.org/2011SummerFinalResolutions.pdf>.

¹⁵ See *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2861, para. 297.

¹⁶ See *id.* at 2857-58, para. 283.

¹⁷ *Id.*

¹⁸ See *id.* at 28601, para. 297.

proposed to codify a rule that would allow eligible low-income consumers to receive only one Lifeline and Link Up discount per residential address,¹⁹ and sought comment on related issues.²⁰

a. Defining “Household” or “Residence”. We seek focused comment on whether a one-per-household or one-per-family rule would provide an administratively feasible approach to providing Lifeline/Link Up support, and how the Commission could implement such a rule.²¹

i. Commenters recommend that the Commission adopt a definition of “household” that mirrors the definitions used to establish eligibility for other federal benefit programs²² or used by other federal agencies.²³ We seek comment on whether any of these definitions, such as the definition of “household” used to establish eligibility for the Low Income Home Energy Assistance Program (LIHEAP)²⁴ or the definition used by the U.S. Census Bureau for surveying purposes,²⁵ would

¹⁹ *Id.* at 2805; para. 106. The Commission noted that codifying a one-per-residential-address requirement would be consistent with the existing single-line-per-residence requirement, and that it would ensure that eligible telecommunications carriers (ETCs) comply with that existing requirement. *Id.* at 2805, para. 107.

²⁰ *Id.* at 2805-10, paras. 109-25.

²¹ *Cf.* GCI Reply Comments at 10 (arguing that “[b]ecause a one-per-residence rule would undermine public policy in the wireless era ... the FCC should adopt a one-per-eligible-adult rule instead ...”); AT&T Comments at 19 (suggesting that the Commission should adopt a “one-per-qualifying-individual” rule rather than a “one-per-residence” rule); COMTEL Comments at 15 (“[A] single line per qualifying eligible adult rule would better promote the goal of providing affordable access to telecommunications services to the low income community.”); Smith Bagley Comments at 8 (“Many low-income households require more than one connection to the telecommunications network.”).

²² *See, e.g.*, Consumer Groups Lifeline/Link Up NPRM Comments at 19-20; AT&T Lifeline/Link Up NPRM Comments at 19; Benton Foundation Lifeline/Link Up NPRM Comments at 4; LCCHR Lifeline/Link Up NPRM Comments at 8. Some examples of federal benefit programs that define “household” or “family” for the purpose of establishing eligibility include the Low Income Home Energy Assistance Program (LIHEAP), Supplemental Nutrition Assistance Program (SNAP), National School Lunch Program (NLSP), Food Distribution Program on Indian Reservations (FDPIR), and Section 8 Public Housing Assistance.

²³ *See, e.g.*, SBI Lifeline/Link Up NPRM Comments at 10-12 (noting that it would be consistent with the definition of “household” employed by the U.S. Census Bureau to treat subdivided hogans as separate residences); Sprint Lifeline/Link Up NPRM Comments at 12 (recommending that Lifeline/Link Up discounts be linked to a family unit that shares a residential address where the family unit corresponds to IRS filing status); GCI Lifeline/Link Up NPRM Reply Comments at 12 (agreeing with Sprint’s proposed “one-per-family” limitation).

²⁴ *See* 42 U.S.C. § 8622(5) (defining “household” as “any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent”).

²⁵ *See* U.S. Census Bureau, State & County QuickFacts, Households, Persons Per Household, and Households with Individuals Under 18 Years, http://quickfacts.census.gov/qfd/meta/long_HSD410209.htm (last visited Aug. 5, 2011) (“A household includes all the persons who occupy a housing unit as their usual place of residence. A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from outside the building or through a common hall. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. (People not living in households are classified as living in group quarters).”).

provide an administratively feasible option for the Commission to employ to define who is eligible for Lifeline/Link Up support.

- ii. On June 1, 2011, TracFone Wireless (TracFone) filed an ex parte letter that detailed its procedures used to comply with a one-per-household limitation.²⁶ Pursuant to this process, applicants residing in group living facilities may receive Lifeline service after the facility notifies TracFone of its status as a group living facility, provides the number of rooms or beds at the facility, and certifies that the applicant resides at the facility.²⁷ In other cases where multiple households reside at an address, TracFone permits applicants to provide an explanation and documentation to show that unrelated persons residing at that address are part of separate households.²⁸ Finally, TracFone directs applicants residing in multiple dwelling units without separate unit numbers to contact the U.S. Postal Service to register that address as containing multiple residential units.²⁹ Once that occurs, the applicant may complete its application for Lifeline service with TracFone.³⁰ We seek comment on whether, if the Commission ultimately adopts a one-per-household rule (or a one-per-residential-address rule), requiring all ETCs to utilize similar procedures when signing up applicants in unique living situations would be an effective means of ensuring compliance with such a rule.
 - iii. MFY Legal Services recommends that the Commission use room numbers and, if applicable, bed numbers to serve as potentially unique address identifiers for residents of group living facilities.³¹ We seek comment on this recommendation. If implemented, what types of information could constitute unique address identifiers? Who should be responsible for providing such information to the ETC – the consumer or the group living facility? Are there group living situations where a unique identifier would not be available, for example a shelter that houses all of its residents in a single room?
- b. Exceptions or Waivers from the “One-Per-Household” or “One-Per-Residential-Address” Rule. On May 25, 2011, MFY Legal Services filed an ex parte presentation that included a copy of the National Telecommunications and Information Administration’s (NTIA) rule providing a limited waiver of the household-based eligibility process for the Digital-to-Analog Converter Box Coupon Program to allow applications from individuals residing in nursing homes, intermediate care facilities, and assisted living facilities.³² The

²⁶ See Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 03-109, 11-42, CC Docket No. 96-45 (filed June 1, 2011) (TracFone June 1, 2011 *Ex Parte* Letter).

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ MFY Legal Services Lifeline/Link Up NPRM Reply Comments at 2; *see also* CenturyLink Lifeline/Link Up NPRM Comments at 13 (noting that “service addresses should be as specific as necessary to properly distinguish living addresses that may otherwise appear to be the same residence”).

³² See Letter from Shelly R. Weizman, Staff Attorney, MFY Legal Services, to Federal Communications Commission, WC Docket No. 11-42 (May 24, 2011) (attaching copy of Household Eligibility and Application

NTIA rule waived the one-per-residence requirement for individuals residing in nursing homes, intermediate care facilities, and assisted living facilities licensed by a state,³³ as well as individuals using post office boxes for mail receipt.³⁴ Third party designees, such as facility administrators and family members, were also allowed to apply on behalf of residents.³⁵ We seek comment on whether that rule could serve as a model for how to address such situations in the context of the low-income program. If the Commission were to adopt a similar rule, what information should applicants be required to provide to demonstrate they reside in such a facility?

- c. One-per-person for Tribal Residents. Smith Bagley provides further calculations in its comments as to the costs associated with providing enhanced Lifeline service to one additional adult per household on Tribal lands.³⁶ Smith Bagley projected that, assuming a 100% take rate, the cost of providing this additional funding would be \$77.7 million per year, or just under one percent of the current size of the overall universal service fund.³⁷ We seek comment on the analysis provided by Smith Bagley.

3. **Link Up.** The NPRM addressed a number of issues regarding Link Up reimbursement for voice services.

- a. Sprint states that the costs associated with initiating phone service have fallen, noting that “the ever-increasing level of automation has reduced the cost of initiating service,”³⁸ and proposes that Link Up support be limited or eliminated.³⁹ We seek comment on this proposal.
- b. Similarly, multiple commenters suggest that only costs actually incurred for initiating service should be reimbursable.⁴⁰ Noting that several wireless providers (TracFone,

Process of the Coupon Program for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, and Households that Utilize Post Office Boxes, 73 Fed. Reg. 54325 (Sept. 19, 2008) (NTIA Rule) (attachment filed with FCC May 25, 2011)).

³³ NTIA modeled its rules on United States Housing and Urban Development (HUD) mortgage insurance rules for its definitions of each living situation. See NTIA Rule, 73 Fed. Reg. at 54326 n.18, 54327 (referencing the definitions of each living situation codified in HUD’s mortgage insurance rules at 12 U.S.C. § 1715).

³⁴ Individuals who use post office boxes to receive mail were required to submit with their application a physical address location, but not proof of address. *Id.* at 54330.

³⁵ *Id.* at 24327-28.

³⁶ See SBI Lifeline/Link Up NPRM Comments at 8-9.

³⁷ *Id.* at 9.

³⁸ Sprint Lifeline/Link Up NPRM Comments at 9.

³⁹ Sprint Lifeline/Link Up NPRM Comments at 9-10; Sprint Lifeline/Link Up NPRM Reply Comments at 7.

⁴⁰ See, e.g., AT&T Lifeline/Link Up NPRM Comments at 29; GCI Lifeline/Link Up NPRM Comments at 30; Keep USF Fair Lifeline/Link Up NPRM Reply Comments 2 at 2; NASUCA Lifeline/Link Up NPRM Comments at 13; MI PSC Lifeline/Link Up NPRM Comments at 4; Sprint Lifeline/Link Up NPRM Comments at 9-10. In response to a December 2010 petition for declaratory ruling filed by TracFone, the Public Utilities of Ohio (PUCO) previously had argued that “‘commencing service’ means an actual physical connection of facilities and does not include ‘activation,’” and that therefore “Link Up support should only be provided for ‘connections’ tied to carrier facilities.” Citing section 54.411(a) of our rules, PUCO observed that “[i]f . . . the rule [governing Link Up] was

Virgin Mobile, i-wireless) do not charge activation fees, and that even wireline service initiations sometimes do not require new installations or service visits, the Indiana Utility Regulatory Commission suggests that the Commission “eliminate the Link Up subsidy for wireless providers and for wireline providers alike, unless greenfield (new) installation of equipment and/or facilities is required.”⁴¹ We seek further focused comment on whether the Commission should provide reimbursement for Link Up only for service initiations that involve the physical installation of facilities by the provider at the consumer’s residence.

4. **Verification of Consumer Eligibility for Lifeline – Sampling Methodology.** In the *2011 Lifeline and Link Up NPRM*, the Commission proposed to amend section 54.410 of its rules to establish a uniform methodology for conducting verification sampling that would apply to all ETCs in all states.⁴² The NPRM also asked commenters to consider two proposals for modifying the existing sampling methodology to more effectively balance the need for an administratively feasible sampling methodology with the Commission’s obligation to ensure that ineligible consumers do not receive Lifeline/Link Up benefits.⁴³ We invite additional comment on this issue.
- a. Commenters such as Montana Independent Telecommunications Systems, NTCA, and TCA state that the Commission’s sample-and-census proposal would be overly burdensome to carriers with a small number of Lifeline subscribers.⁴⁴ With respect to the Commission’s sample-and-census proposal, could the Commission implement it in a way that would be more easily administrable for ETCs, particularly ETCs with a small number of Lifeline subscribers?
 - b. TCA proposes that, if the Commission adopts a sample-and-census rule, carriers with a small number of Lifeline subscribers should be required to sample fewer consumers than ETCs with a larger number of Lifeline subscribers.⁴⁵ We seek comment on this proposal. Should the Commission consider a smaller sample size for ETCs with a small number of Lifeline customers in a given state? What number of respondents could ETCs with a smaller number of Lifeline customers feasibly sample in a given year, keeping in mind that reducing the required number of respondents could result in larger margins of

intended to contemplate something other than a physical connection to the carrier’s facilities, then it would not include the phrase ‘at a consumer’s principal place of residence’ to further clarify the rule’s apparent intent to require a joining of carrier and subscriber facilities.” See *TracFone Wireless, Petition for Declaratory Ruling*; WC Docket Nos. 09-197, 03-109; Ohio PUC Comments, at 3 (filed Dec. 23, 2010).

⁴¹ See IRUC Lifeline/Link Up NPRM Comments at 5.

⁴² *2011 Lifeline and Link Up NPRM*, 26 FCC Rcd at 2825, para. 177.

⁴³ See *id.* at 2827, para. 182.

⁴⁴ See, e.g., MITS Lifeline/Link Up NPRM Reply Comments at 5; NTCA Lifeline/Link Up NPRM Comments at 6; TCA Lifeline/Link Up NPRM Comments at 3-4. *But see* Letter from Commissioner Anne Boyle, Nebraska Public Service Commission, to Julius Genachowski, Chairman, Federal Communications Commission, WC Docket Nos. 03-109, 11-42, CC Docket No. 96-45 (July 21, 2011) (stating that consumers who fail to respond to verification inquiries should not continue receiving Lifeline service, as the verification process is not burdensome to consumers, and it is a mandatory requirement for those who receive government benefits).

⁴⁵ TCA Lifeline/Link Up NPRM Comments at 3-4.

error?⁴⁶

- c. Alternatively, should carriers with a small number of Lifeline subscribers be required to sample only a specified percentage of their customer base?⁴⁷ What would be a reasonable percentage in such cases?

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **WC Docket Nos. 11-42, 03-109, and CC Docket No. 96-45** and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
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In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Jamie Susskind, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B418, Washington, D.C. 20554; e-mail: Jamie.Susskind@fcc.gov; and
- (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554; e-mail: Charles.Tyler@fcc.gov.

⁴⁶ 2011 Lifeline and Link Up NPRM, 26 FCC Rcd at 2827, para. 184.

⁴⁷ See, e.g., NTCA Lifeline/Link Up NPRM Comments at 6 (recommending that the Commission require carriers of all sizes to sample only a reasonable percentage of their subscribers).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.⁴⁹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.⁵⁰

For further information, please contact Jamie Susskind, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

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⁴⁸ 47 C.F.R. §§ 1.1200 *et seq.*

⁴⁹ *See* 47 C.F.R. § 1.1206(b)(2).

⁵⁰ 47 C.F.R. § 1.1206(b).